IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Summons for Judgment No.879 of 2004
in
Sum Suit No.3049 of 2004

The Mahalakshmi Glass Works Pvt Ltd...Plaintiffs
vs
M/s Janta Glass Works and ors.....Defendants

Mr. K Kukreja with Mr Rishbh Shah,Mr Dilip Pai,Mr Sachin Gaikwad i/b Raval Shah and co for plaintiffs
Mr P S Rao with Mr Tushar Bhavsar i/b Crawford Bayley and co for defendant nos l to 4

CORAM: S.U.KAMDAR J.
Dated 5.l0.2005

P.C:

l. The present suit is filed in respect of goods sold and delivered, the details of each of the invoices are mentioned in the particulars of claim annexed at Exh L to the plaint. The total amount arising under the invoices which are 88l in number amounting to Rs. 6,60,89,887.48. The plaintiffs have not claimed interest earlier but interest is charged at the rate of l2% p.a. from the date of filing of the suit till payment and/or realisation.

2. The learned counsel appearing for the defendants has raised three defences.Firstly it has been contended that there is no privity of contract between the plaintiffs and the defendants though invoices are raised on the plaintiffs. There is no

written contract between the plaintiffs and the defendants. The sale of goods have been effected on third party and, therefore, the plaintiffs are not liable to make payment in respect of the said amount. The second contention raised by the learned counsel for the plaintiffs is that there has been defective goods and in respect of the defective goods there are debit notes which they have received from third parties and, therefore there is quality dispute and defendants are not liable to make payment to the plaintiffs in respect thereof. The last contention raised is that the defendants have counter claim as against the plaintiffs for loss of reputation in respect of the orders placed with them on behalf of third parties and third parties having raised various disputes in respect thereof. In support of the aforesaid contentions the learned counsel has relied upon a letter dated 2lst May 2004 issued by the advocate of the defendants to the learned counsel for the plaintiffs to which reference is made in para 6 of the affidavit in reply. The learned counsel further contended that since there is already an order of attachment before judgment under interim order passed by this court in the present case, this court ought not exercise jurisdiction in passing any order in the present Summons for

Judgment.

3. I find no merits in any of the submissions of the learned counsel for the defendants. Firstly as far as the contention regarding privity of contract is concerned of the letter dated 2lst May 2004 reads as under:

> " With reference to paragraph l of your said letter, our clients state that it is correct that your clients are manufacturers and suppliers of various varies of glass bottles and jars and that our clients have been purchasing glasses bottles from your clients . For this purpose, our clients have been placing orders with your clients for supply of glass bottles. Our clients state that since last about three years there has been constant complaints from the customers of our clients with regard to the quality,quantity of and weight difference in the bottles supplied by your clients due to which our clients have been suffering rejection of the bottles supplied to their purchasers...."

4. This averment of the letter is indicative that

in fact orders are placed by the defendants with the plaintiffs and at the instance of the defendants goods are delivered to third parties and this shows direct privity of contract between the plaintiffs ands the defendants and therefore the contention that there is no privity of contract between them is without any merits and is accordingly rejected. The next contention raised is as regards the quality dispute. This dispute is raised for the first time in the letter dated 2lst May 2004 which was in response to the demand notice. Accordingly even in this contention I do not find any merit. The defendants also drew my attention to the notice received by them from the third parties of the plaintiffs for purportedly raising the dispute as to the quality of goods thereof. I do not find any merit in this contention pertaining to the quality of goods raised by the defendants because no such complaint has been forwarded to the plaintiffs by the defendants. The last contention is that there is counter claim by the defendants for the loss of reputation which is suffered by the defendants by virtue of the defective goods supplied by the plaintiffs. In view of the fact that I have rejected the aforesaid contention of quality of goods, third contention is also required to be

rejected. I am also of the opinion that mere fact that there is attachment before judgement which was allowed under Order 38 rule 5 of the CPC, power of the court to exercise jurisdiction under Order 37 Rule 2 of the CPC is not precluded and in appropriate case appropriate order can be passed. Despite above position in order to give an opportunity to the defendants to defend the suit I grant leave on condition that the defendants would deposit a sum of Rs.6 crores in this court within a period of four weeks from today failing which the plaintiffs will be entitled to the decree. If the amount is so deposited attachment that has been levied under Order 38 Rule 5 to stand vacated. If the amount is not so deposited attachment will continue and the plaintiffs will be entitled to a decree for a non deposit. The amount so deposited will be invested by the Prothonotary and Senior Master in fixed deposits of any nationalised bank initially for a period of three years and renew the same from time to time till further orders.

5. If the amount is paid as aforesaid, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks

thereafter. Inspection and discovery within four weeks thereafter. Suit to be placed on board of the learned Judge taking Commercial Causes.